

From: [McGill, Richard](#)
To: [Brown, Don](#)
Cc: [Salk, Chloe](#); [Fox, Tim](#)
Subject: FW: 35 IAC 820; 47 IR 1812
Date: Wednesday, April 19, 2023 12:07:34 PM
Attachments: [image001.png](#)
[R23-17 Responses to JCAR.pdf](#)
[35-820RG-P r01 \(47-06\).pdf](#)

Good afternoon, Mr. Clerk:

Please docket this email exchange with JCAR, including the two attachments, as a public comment in R23-17.

Thank you.

Richard R. McGill, Jr.
Senior Attorney for Research & Writing
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
Chicago, Illinois 60605
richard.mcgill@illinois.gov (312) 814-6983



From: McGill, Richard
Sent: Wednesday, April 19, 2023 12:06 PM
To: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Subject: RE: 35 IAC 820; 47 IR 1812

Good afternoon, Jonathan:

I've attached two documents. The first document contains Board staff responses to your questions and proposed changes on Part 820. The second document is the JCAR line-numbered r01 referenced by both of us. Our responses include related changes prompted by your suggestions.

Thank you for your careful review. Please let me know if you have any questions.

Best regards,

Richard

Richard R. McGill, Jr.
Senior Attorney for Research & Writing
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
Chicago, Illinois 60605
richard.mcgill@illinois.gov (312) 814-6983



From: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Sent: Thursday, March 2, 2023 10:39 AM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] 35 IAC 820; 47 IR 1812

Richard –

Hope all is well with you.

Here are our questions and proposed changes for this rulemaking.

Thanks!

Jonathan

Substantive questions:

Line 241: The address designated where by the agency?

Lines 340-341: What requirements that are necessary under the Act and this Part need to still be incorporated? This seems like the ideal place to stipulate what these are.

Lines 454-484, 491-500: These standards are really broad, and aren't exactly helpful. Where is it specified which equipment is necessary, what the minimal standards for shelter, sanitary facilities, and emergency communications are, and what fire protection equipment is necessary. What standards must the facility meet for dust control, surface water drainage, and run-on and runoff control? Admittedly facilities differ, but the standards to be applied need to be cross-referenced if elsewhere in rule or incorporated by reference if not.

Lines 712-714 and 718: "*in a form and format prescribed by the Agency*" → Something more than this needs to be added to the rule. We're not interested in having the precise forms listed, but some notion of the general format for storage should be provided.

Lines 818, 824, etc.: Not really a substantive question, but should it be "current approved closure cost estimate" or "currently approved closure cost estimate"?

Generally: Sec. 22.38(n) requires the rules to contain "requirements for the separation and separate management of any clean construction or demolition debris that will be transported to a clean construction or demolition debris fill operation." Where are those requirements in the rule?

1. In line 57, change "pursuant to" to "under".

2. In line 87, change ", 11 U.S.C. 101, et seq." to "(11 U.S.C. 101 et seq.)".
3. In line 87, change "(a)" to a carriage return.
4. In line 88, change "(b)" to a carriage return.
5. In line 89, change "(c)" to a carriage return.
6. In line 89, change "case under Chapter 11" to "Chapter 11 case".
7. In line 90, change "case under Chapter 7" to "Chapter 7 case". Change the comma to "and".
8. In line 136, after "with" delete the comma.
9. In line 137, after "facilitate" delete the comma.
10. In line 149, delete "as".
11. In line 155, change "an" to "a direct or indirect". Delete ", directly or indirectly,".
12. In line 156, change "who has an interest, directly or indirectly, in" to "the".
13. In lines 156-157, delete ", including a leasehold interest,".
14. In line 159, after the period add ""Interest" includes a leasehold interest in the land.".
15. In line 163, change "*their*" to "its".
16. In line 167, delete "so as".
17. In line 168, delete the comma. After "and" add "disease".
18. In line 171, change "(i)" to a carriage return. Change "(ii)" to a carriage return.
19. In line 173, after the period add a carriage return.
20. In line 174, change "(i)" to a carriage return.
21. In line 175, change "(ii)" to a carriage return.
22. In line 177, delete "*subsection (b) of*".
23. In line 178, change "3.160" to "3.160(b)".
24. In line 179, change "(iii)" to a carriage return.
25. In line 189, change "such" to "this".
26. In line 223, after "*operator*" add "of a facility".
27. In lines 225-226, replace "*no later than 6 months after the effective date of this Part*" with an actual date.
28. In lines 229-230, replace "on the date this Part takes effect" with an actual date.
29. In line 231, delete the comma. Change "submit an application" to "apply". Change "their" to "that".
30. In lines 231-232, change "no later than one year after the effective date of this Part" to an actual date.
31. In lines 234-235, change "*one year after the effective date of rules adopted by the Board under this Part*" to an actual date.
32. In line 250, delete the comma.
33. In lines 256 and 258, change "1000" to "1,000".
34. In line 262, delete the comma.
35. In line 264, change "1000" to "1,000".
36. In line 268, change ", 42 U.S.C. 300f," to "(42 U.S.C. 300f et seq. at 300h-7)".
37. In line 270, delete "to". After "SDWA" add "(42 U.S.C. 300h-3)".
38. In line 272, after the subsection label add "the".
39. In line 295, delete "and".
40. In line 297, after "estimate" add a semicolon. After "and" add a carriage return, subsection label "6)", and "the".
41. In line 302, after "considered" add "to be".
42. In line 306, delete the comma.
43. In line 307, delete the first two commas. After "reasons" add "for that determination".
44. In line 314, change "from" to "after".
45. In lines 327-328, change "in accordance with" to "under".

46. In line 332, delete the commas.
47. In line 339, change "to identify" to "that identifies".
48. In line 340, change "incorporate" to "incorporates". Change "necessary under" to "of".
49. In line 359, change "pursuant to" to "under". After "IX" add a comma.
50. In line 364, delete "do not" and "until".
51. In line 365, change "it" to "notice of the modification".
52. In lines 365-366, delete "the pendency of".
53. In line 366, change "request" to "ask".
54. In line 377, change "*one year after the effective date of this Part*" to an actual date.
55. In lines 386-387, change "*any rules or regulations adopted thereunder*" to "and 35 Ill. Adm. Code 1100".
56. In line 392, change "regulations" to "rules".
57. In line 405, after "*disposed*" add "of".
58. In lines 411 and 413, change the period to a semicolon.
59. In line 415, change the period to "; or".
60. In line 437, change "must" to "may".
61. In lines 441 and 449, delete "situation".
62. In line 531, after "from" add "a".
63. In line 556., after "decontamination equipment," add "and".
64. In line 583, after "acceptance," add "an".
65. In line 584, change "ground level" to "ground-level".
66. In line 585, change "in accordance with" to "under".
67. In line 633, italicize "All putrescible recyclable GCDD".
68. In lines 634-635, italicize "transported off-site within 45 calendar days after receipt".
69. In line 637, italicize "All non-putrescible recyclable GCDD".
70. In line 638, italicize "transported off-site within", change "six" to "6", delete "calendar", and italicize "months after receipt".
71. In line 660, delete the comma.
72. In line 677, change "White good components" to "Components of white goods".
73. In lines 692-693, italicize "tagging and daily recordkeeping procedures to demonstrate compliance".
74. In line 697, italicize "identify the type".
75. In line 698, italicize "and transporter".
76. In line 702, italicize "identify the type" and "destination, transporter".
77. In line 717, delete "of this Section".
78. In lines 745-746, change ", in accordance with" to "under".
79. In line 762, after "closure" add a comma.
80. In line 767, change "beginning" to "the beginning of".
81. In line 771, after "from" add "the". Change "practically" to "practicably".
82. In lines 815-816, change "one year after the effective date of this Part" to an actual date.
83. In line 830, change "them" to "both".
84. In lines 854 and 855, change "their" to "the".
85. In line 870, change "in accordance with" to "under".
86. In line 876, change "in accordance with" to "under".
87. In line 898, change "(i)" to a colon, a carriage return, and subsection label "1)". After "820.305" add a semicolon.
88. In line 899, change "(ii)" to a carriage return and subsection label "2)".
89. In line 920, after "trust" add a comma.
90. In line 923, change "third party" to "third-party".

91. In line 932, delete "expiration of". After "period" add "expires".
92. In lines 938-939, change "in accordance with" to "under".
93. In line 942, change "prior to" to "before".
94. In lines 942-943, change "in accordance with" to "under".
95. In line 943, change "commences" to "starts".
96. In line 957, change "prior to" to "before".
97. In line 958, change "in accordance with" to "under".
98. In lines 968-969 and 970-971, change "in accordance with" to "under".
99. In line 969, change "prior to" to "before".
100. In line 971, delete "of this Section".
101. In line 1005, change "with respect to" to "for".
102. In line 1016, change "excess funds:" to "Excess Funds".
103. In lines 1020 and 1025, change "in excess of" to "over".
104. In line 1029, change "pursuant to" to "under".
105. In line 1032, change "in excess of" to "more than".
106. In line 1035, change "removal expenses:" to "Removal Expenses".
107. In line 1046, change "are in accordance" to "comply".
108. In line 1050, change "in accordance with" to "under".
109. In line 1055, delete "in order".
110. In lines 1067 and 1074, change "which" to "that".
111. In line 1089, change "amount:" to "Amount".
112. In line 1110, change "in accordance with" to "under".
113. In line 1125, after "with" add "the".
114. In line 1127, change "closure expenses:" to "Closure Expenses".
115. In line 1153, change "which" to "that".
116. In line 1158, delete the colon.
117. In line 1177, after "upon" add "the".
118. In line 1178, delete the comma.

Jonathan C. Eastvold, Ph.D.
Rules Analyst III

Illinois General Assembly
Joint Committee on Administrative Rules
700 Stratton Building
Springfield IL 62706
217-524-9010

State of Illinois - CONFIDENTIALITY NOTICE: The information contained in this communication is confidential, may be attorney-client privileged or attorney work product, may constitute inside information or internal deliberative staff communication, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail and destroy this communication and all copies thereof, including all attachments. Receipt by an unintended recipient does not waive attorney-client privilege, attorney work product privilege, or any other exemption from disclosure.

From: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Sent: Thursday, March 2, 2023 10:39 AM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] 35 IAC 820; 47 IR 1812

Richard –

Hope all is well with you.

Here are our questions and proposed changes for this rulemaking.

Thanks!

Jonathan

Substantive questions:

Line 241: The address designated where by the agency?

Lines 340-341: What requirements that are necessary under the Act and this Part need to still be incorporated? This seems like the ideal place to stipulate what these are.

Lines 454-484, 491-500: These standards are really broad, and aren't exactly helpful. Where is it specified which equipment is necessary, what the minimal standards for shelter, sanitary facilities, and emergency communications are, and what fire protection equipment is necessary. What standards must the facility meet for dust control, surface water drainage, and run-on and runoff control? Admittedly facilities differ, but the standards to be applied need to be cross-referenced if elsewhere in rule or incorporated by reference if not.

Lines 712-714 and 718: "*in a form and format prescribed by the Agency*" à Something more than this needs to be added to the rule. We're not interested in having the precise forms listed, but some notion of the general format for storage should be provided.

Lines 818, 824, etc.: Not really a substantive question, but should it be "current approved closure cost estimate" or "currently approved closure cost estimate"?

Generally: Sec. 22.38(n) requires the rules to contain "requirements for the separation and separate management of any clean construction or demolition debris that will be transported to a clean construction or demolition debris fill operation." Where are those requirements in the rule?

1. In line 57, change "pursuant to" to "under".
2. In line 87, change ", 11 U.S.C. 101, et seq." to "(11 U.S.C. 101 et seq.)".
3. In line 87, change "(a)" to a carriage return.
4. In line 88, change "(b)" to a carriage return.
5. In line 89, change "(c)" to a carriage return.
6. In line 89, change "case under Chapter 11" to "Chapter 11 case".

7. In line 90, change "case under Chapter 7" to "Chapter 7 case". Change the comma to "and".
8. In line 136, after "with" delete the comma.
9. In line 137, after "facilitate" delete the comma.
10. In line 149, delete "as".
11. In line 155, change "an" to "a direct or indirect". Delete ", directly or indirectly,".
12. In line 156, change "who has an interest, directly or indirectly, in" to "the".
13. In lines 156-157, delete ", including a leasehold interest,".
14. In line 159, after the period add ""Interest" includes a leasehold interest in the land.".
15. In line 163, change "*their*" to "its".
16. In line 167, delete "so as".
17. In line 168, delete the comma. After "and" add "disease".
18. In line 171, change "(i)" to a carriage return. Change "(ii)" to a carriage return.
19. In line 173, after the period add a carriage return.
20. In line 174, change "(i)" to a carriage return.
21. In line 175, change "(ii)" to a carriage return.
22. In line 177, delete "*subsection (b) of*".
23. In line 178, change "3.160" to "3.160(b)".
24. In line 179, change "(iii)" to a carriage return.
25. In line 189, change "such" to "this".
26. In line 223, after "*operator*" add "of a facility".
27. In lines 225-226, replace "*no later than 6 months after the effective date of this Part*" with an actual date.
28. In lines 229-230, replace "on the date this Part takes effect" with an actual date.
29. In line 231, delete the comma. Change "submit an application" to "apply". Change "their" to "that".
30. In lines 231-232, change "no later than one year after the effective date of this Part" to an actual date.
31. In lines 234-235, change "*one year after the effective date of rules adopted by the Board under this Part*" to an actual date.
32. In line 250, delete the comma.
33. In lines 256 and 258, change "1000" to "1,000".
34. In line 262, delete the comma.
35. In line 264, change "1000" to "1,000".
36. In line 268, change ", 42 U.S.C. 300f," to "(42 U.S.C. 300f et seq. at 300h-7)".
37. In line 270, delete "to". After "SDWA" add "(42 U.S.C. 300h-3)".
38. In line 272, after the subsection label add "the".
39. In line 295, delete "and".
40. In line 297, after "estimate" add a semicolon. After "and" add a carriage return, subsection label "6)", and "the".
41. In line 302, after "considered" add "to be".
42. In line 306, delete the comma.
43. In line 307, delete the first two commas. After "reasons" add "for that determination".
44. In line 314, change "from" to "after".
45. In lines 327-328, change "in accordance with" to "under".
46. In line 332, delete the commas.

47. In line 339, change "to identify" to "that identifies".
48. In line 340, change "incorporate" to "incorporates". Change "necessary under" to "of".
49. In line 359, change "pursuant to" to "under". After "IX" add a comma.
50. In line 364, delete "do not" and "until".
51. In line 365, change "it" to "notice of the modification".
52. In lines 365-366, delete "the pendency of".
53. In line 366, change "request" to "ask".
54. In line 377, change "*one year after the effective date of this Part*" to an actual date.
55. In lines 386-387, change "*any rules or regulations adopted thereunder*" to "and 35 Ill. Adm. Code 1100".
56. In line 392, change "regulations" to "rules".
57. In line 405, after "*disposed*" add "of".
58. In lines 411 and 413, change the period to a semicolon.
59. In line 415, change the period to "; or".
60. In line 437, change "must" to "may".
61. In lines 441 and 449, delete "situation".
62. In line 531, after "from" add "a".
63. In line 556., after "decontamination equipment," add "and".
64. In line 583, after "acceptance," add "an".
65. In line 584, change "ground level" to "ground-level".
66. In line 585, change "in accordance with" to "under".
67. In line 633, italicize "All putrescible recyclable GCDD".
68. In lines 634-635, italicize "transported off-site within 45 calendar days after receipt".
69. In line 637, italicize "All non-putrescible recyclable GCDD".
70. In line 638, italicize "transported off-site within", change "six" to "6", delete "calendar", and italicize "months after receipt".
71. In line 660, delete the comma.
72. In line 677, change "White good components" to "Components of white goods".
73. In lines 692-693, italicize "tagging and daily recordkeeping procedures to demonstrate compliance".
74. In line 697, italicize "identify the type".
75. In line 698, italicize "and transporter".
76. In line 702, italicize "identify the type" and "destination, transporter".
77. In line 717, delete "of this Section".
78. In lines 745-746, change ", in accordance with" to "under".
79. In line 762, after "closure" add a comma.
80. In line 767, change "beginning" to "the beginning of".
81. In line 771, after "from" add "the". Change "practically" to "practicably".
82. In lines 815-816, change "one year after the effective date of this Part" to an actual date.
83. In line 830, change "them" to "both".
84. In lines 854 and 855, change "their" to "the".
85. In line 870, change "in accordance with" to "under".
86. In line 876, change "in accordance with" to "under".
87. In line 898, change "(i)" to a colon, a carriage return, and subsection label "1)". After "820.305" add a semicolon.
88. In line 899, change "(ii)" to a carriage return and subsection label "2)".

89. In line 920, after "trust" add a comma.
90. In line 923, change "third party" to "third-party".
91. In line 932, delete "expiration of". After "period" add "expires".
92. In lines 938-939, change "in accordance with" to "under".
93. In line 942, change "prior to" to "before".
94. In lines 942-943, change "in accordance with" to "under".
95. In line 943, change "commences" to "starts".
96. In line 957, change "prior to" to "before".
97. In line 958, change "in accordance with" to "under".
98. In lines 968-969 and 970-971, change "in accordance with" to "under".
99. In line 969, change "prior to" to "before".
100. In line 971, delete "of this Section".
101. In line 1005, change "with respect to" to "for".
102. In line 1016, change "excess funds:" to "Excess Funds".
103. In lines 1020 and 1025, change "in excess of" to "over".
104. In line 1029, change "pursuant to" to "under".
105. In line 1032, change "in excess of" to "more than".
106. In line 1035, change "removal expenses:" to "Removal Expenses".
107. In line 1046, change "are in accordance" to "comply".
108. In line 1050, change "in accordance with" to "under".
109. In line 1055, delete "in order".
110. In lines 1067 and 1074, change "which" to "that".
111. In line 1089, change "amount:" to "Amount".
112. In line 1110, change "in accordance with" to "under".
113. In line 1125, after "with" add "the".
114. In line 1127, change "closure expenses:" to "Closure Expenses".
115. In line 1153, change "which" to "that".
116. In line 1158, delete the colon.
117. In line 1177, after "upon" add "the".
118. In line 1178, delete the comma.

Jonathan C. Eastvold, Ph.D.
Rules Analyst III

Illinois General Assembly
Joint Committee on Administrative Rules
700 Stratton Building
Springfield IL 62706
217-524-9010

Board staff responses and related changes (4/19/23) appear in bold, red font below.

Substantive questions:

Line 241: The address designated where by the agency?

As implied here in subsection (a) of Section 820.202 and made more apparent in subsection (f) at lines 320-21, IEPA will designate the address in the permit application forms. To make that explicit in subsection (a), we propose the following:

- In line 241, after “Agency” add “in those forms”.**

Lines 340-341: What requirements that are necessary under the Act and this Part need to still be incorporated? This seems like the ideal place to stipulate what these are.

A new permittee would have its own financial assurance. And the form of that financial assurance (trust fund, insurance, or combination) might differ from the current permittee’s form of financial assurance. In addition, a new permittee might wish to modify the current permittee’s facility operations. Depending on the changes under a new permittee, provisions of the Act or these rules that do not apply to the current permittee may apply to the new permittee and warrant modifications in the transferred permit. Of course, those will vary from transfer to transfer and therefore cannot be specified in the rule.

Lines 454-484, 491-500: These standards are really broad, and aren't exactly helpful. Where is it specified which equipment is necessary, what the minimal standards for shelter, sanitary facilities, and emergency communications are, and what fire protection equipment is necessary. What standards must the facility meet for dust control, surface water drainage, and run-on and runoff control? Admittedly facilities differ, but the standards to be applied need to be cross-referenced if elsewhere in rule or incorporated by reference if not.

By way of background, IEPA’s rulemaking proposal was required by Public Act 102-310, eff. Aug. 6, 2021, which passed the House and the Senate without a single No Vote in either chamber. Proponents of the bill included the Illinois Environmental Council, the National Waste & Recycling Association, the Illinois Recycling Association, and the Solid Waste Agency of Lake County.

For over 25 years, IEPA has been regulating facilities that accept GCDD. At page 3 of the Board’s first-notice opinion, it noted that IEPA drafted its rulemaking proposal “with the objective of maintaining as much of the existing operational standards as practicable.” In March 2022, IEPA circulated a draft proposal “to interested parties including GCDD recovery facilities, local governments and counties, as well as additional stakeholders.” IEPA received comments and questions, in response to which it revised its proposal.

Consistent with JCAR’s acknowledgement that “facilities differ,” the first-notice opinion at page 23 cited IEPA’s intention to reflect current requirements in its proposal. “[A]s under the current regulatory framework, each GCDD recovery facility has flexibility in satisfying

these operational requirements by submitting permit applications uniquely tailored to the individual characteristics of each site.” If IEPA determines that a permit application is incomplete, denies a permit, or grants a permit with a condition to which the applicant objects, the applicant may appeal IEPA’s determination to the Board. *See* Section 820.202(d)(3), (h).

JCAR’s question addresses general operating standards for Equipment, Utilities, Maintenance, Dust Control, Fire Protection, Vehicle Safety Measures, and Run-on and Run-off Control. Through two hearings and post-hearings comments, rulemaking participants did not raise substantive questions about these operational standards or argue that they were too broad—with the limited exception of Dust Control addressed below. No rulemaking participant suggested any cross-reference or identified any specific operating standard to incorporate by reference. Rulemaking participants have included the Illinois Attorney General’s Office (AG), the Illinois Environmental Regulatory Group, and the National Waste & Recycling Association.

On general operating standards for Dust Control, both the Board and the AG asked whether facilities should be required to submit a dust control plan. IEPA responded that a permit application must address and include devices for controlling dust and litter at the facility. At page 25 of the first-notice opinion, the Board noted IEPA’s position that it “sought to provide flexibility to allow facilities to determine the best means to minimize dust at their location rather than prescribe specific planning criteria.” IEPA indicated that its proposed standard is clear in establishing that a facility must prevent “wind dispersal of particulate matter.” It added that it will rely on that standard “as the gauge for whether dust is being adequately controlled.” First-Notice Op. at 26. IEPA also stressed that, if an owner or operator failed to meet that standard, the facility would be subject to an enforcement action. The Board concluded that these provisions “adequately address dust control at GCDD facilities while providing site-specific flexibility to determine best means of dust control.”

Lines 712-714 and 718: "*in a form and format prescribed by the Agency*" Something more than this needs to be added to the rule. We're not interested in having the precise forms listed, but some notion of the general format for storage should be provided.

As with the general operating standards above, these recordkeeping requirements did not generate substantive comment. *See* First-Notice Op. at 39. IEPA explained that they “reflect the intersection of historic operational practices and recent changes to Section 22.38 of the Act.” IEPA Prop. at 43. “Other than quarterly reporting,” the recordkeeping requirements are “included in existing GCDD recovery facility permits.” And the quarterly reporting requirements were “established by P.A. 102-310 and are directly mirrored in the proposal.”

The Board asked IEPA whether it had developed recordkeeping forms and, if so, to submit them into the rulemaking record. IEPA responded that it has and provided its “Construction & Demolition Debris Recovery Facility Quarterly Report” form. IEPA 10/26/22 Answers at 4, Att. A.

Lines 818, 824, etc.: Not really a substantive question, but should it be "current approved closure cost estimate" or "currently approved closure cost estimate"?

The rules consistently use “current”. The adjective “current” is appropriate as this refers to the most recent estimate, *i.e.*, the estimate existing at the present time. The adverb “currently” is less appropriate as the focus of the term is the estimate rather than the approval.

Generally: Sec. 22.38(n) requires the rules to contain "requirements for the separation and separate management of any clean construction or demolition debris that will be transported to a clean construction or demolition debris fill operation." Where are those requirements in the rule?

Section 820.301(c) codifies the Section 22.38(k) prohibition that a GCDD recovery facility must not deposit GCDD onto land or water. And the rule includes the statutory exception that CCDD may be used as fill if separated under Section 22.51 of the Act and rules adopted under it.

Section 820.303 establishes a processing program requiring the facility to inspect every load transported to it. The requirements include “[m]aintaining documentation reflecting the results of each load inspection”. Subsection (c) addresses the separation of acceptable materials into specified categories. Subsection (c)(5) provides that “CCDD and uncontaminated soil that is separated from GCDD received at the GCDD recovery facility may be transported off-site for use complying with the Act and rules adopted under the Act.” The Board adopted rules addressing CCDD operations at Part 1100, including certifications and load checking at Section 1100.205.

1. In line 57, change "pursuant to" to "under".
Agree.
2. In line 87, change ", 11 U.S.C. 101, et seq." to "(11 U.S.C. 101 et seq.)".
Agree.
3. In line 87, change "(a)" to a carriage return.
Agree.
4. In line 88, change "(b)" to a carriage return.
Agree.
5. In line 89, change "(c)" to a carriage return.
Agree.
6. In line 89, change "case under Chapter 11" to "Chapter 11 case".
Agree.

7. In line 90, change "case under Chapter 7" to "Chapter 7 case". **a. Agree.** Change the comma to "and". **b. Agree.**
c. In lines 103 and 123, change "provided" to "if".
d. In line 125, change "shall be" to "is".
e. In line 126, change "shall" to "is". Delete "be".
f. In line 129, change "accordance" to "compliance".
g. In line 134, delete ", but not limited to,".
8. In line 136, after "with" delete the comma.
Agree.
9. In line 137, after "facilitate" delete the comma.
Agree.
10. In line 149, delete "as".
Agree (the first "as").
11. In line 155, change "an" to "a direct or indirect". **a. Agree.** Delete ", directly or indirectly,". **b. Agree.**
12. In line 156, change "who has an interest, directly or indirectly, in" to "the".
Agree.
13. In lines 156-157, delete ", including a leasehold interest,".
Agree.
14. In line 159, after the period add ""Interest" includes a leasehold interest in the land."
Agree with the addition but not its location. The addition should instead go in line 158 after the period. In this way, the explanation of the word "interest" immediately follows its use.
15. In line 163, change "their" to "its".
Disagree. The statutory text uses the plural possessive "their" to refer to the legal representative, agent, or assigns of any of those identified in the litany. Also, "its" would not work as a possessive for "individual".
16. In line 167, delete "so as".
Agree.
17. In line 168, delete the comma. **a. Agree.** After "and" add "disease". **b. Agree.**
18. In line 171, change "(i)" to a carriage return. **a. Agree.** Change "(ii)" to a carriage return.
b. Agree.
19. In line 173, after the period add a carriage return.
Agree.

20. In line 174, change "(i)" to a carriage return.
Agree.
21. In line 175, change "(ii)" to a carriage return.
a. Agree.
b. In lines 175-76, delete “, but not limited to,”
22. In line 177, delete "subsection (b) of".
Agree.
23. In line 178, change "3.160" to "3.160(b)".
Agree.
24. In line 179, change "(iii)" to a carriage return.
Agree.
25. In line 189, change "such" to "this".
Agree.
26. In line 223, after "operator" add "of a facility".
Disagree. After “operator” add “of a GCDD recovery facility”.
27. In lines 225-226, replace "no later than 6 months after the effective date of this Part" with an actual date.
Agree. We will propose a date (i.e., “by DATE”) during second notice once we have a better sense of when the Board will be able to adopt and file final rules.
28. In lines 229-230, replace "on the date this Part takes effect" with an actual date.
Agree but will retain “on”. We will propose a date (i.e., “on DATE”) during second notice once we have a better sense of when the Board will be able to adopt and file final rules.
29. In line 231, delete the comma. **a. Agree.** Change "submit an application" to "apply". **b. Agree.** Change "their" to "that". **c. Agree.**
30. In lines 231-232, change "no later than one year after the effective date of this Part" to an actual date.
Agree. We will propose a date (i.e., “by DATE”) during second notice once we have a better sense of when the Board will be able to adopt and file final rules.
31. In lines 234-235, change "one year after the effective date of rules adopted by the Board under this Part" to an actual date.
a. Agree. We will propose a date (i.e., “on DATE”) during second notice once we have a better sense of when the Board will be able to adopt and file final rules.
b. In line 241, after “Agency” add “in those forms”.

32. In line 250, delete the comma.
Agree.
33. In lines 256 and 258, change "1000" to "1,000".
Agree.
34. In line 262, delete the comma.
Agree.
35. In line 264, change "1000" to "1,000".
Agree.
36. In line 268, change ", 42 U.S.C. 300f," to "(42 U.S.C. 300f et seq. at 300h-7)".
Disagree. The citation is provided for a single section—Section 1428—which is 42 U.S.C. 300h-7. Change ", 42 U.S.C. 300f," to "(42 U.S.C. 300h-7)".
37. In line 270, delete "to". **Agree.** After "SDWA" add "(42 U.S.C. 300h-3)". **Disagree. The text refers to subsection (e) of Section 1424. After "SDWA" add "(42 U.S.C. 300h-3(e))".**
38. In line 272, after the subsection label add "the".
Agree.
39. In line 295, delete "and".
Agree.
40. In line 297, after "estimate" add a semicolon. **a. Agree.** After "and" add a carriage return, subsection label "6)", and "the". **b. Agree to add a carriage return and subsection label "6)". Disagree with adding "the". The definite article “the” is not used when referring to “proof of financial assurance”. c. In line 298, delete “of this Part”.**
41. In line 302, after "considered" add "to be".
Agree.
42. In line 306, delete the comma.
Agree.
43. In line 307, delete the first two commas. **a. Agree.** After "reasons" add "for that determination". **b. Agree.**
44. In line 314, change "from" to "after".
Agree.
45. In lines 327-328, change "in accordance with" to "under".

Agree.

46. In line 332, delete the commas.
Agree.
47. In line 339, change "to identify" to "that identifies".
Agree.
48. In line 340, change "incorporate" to "incorporates". **a. Agree. b. After “other” add “applicable”.** Change "necessary under" to "of". **c. Agree.**
49. In line 359, change "pursuant to" to "under". **a. Agree.** After "IX" add a comma. **b. Agree.**
50. In line 364, delete "do not" and "until".
a. Agree.
b. Change “Modifications” to “A modification”.
c. Change “become” to “becomes”.
51. In line 365, change "it" to "notice of the modification".
a. Agree.
b. Delete the comma.
52. In lines 365-366, delete "the pendency of".
Agree.
53. In line 366, change "request" to "ask".
a. Disagree. Through our oversight, the text changes described in (b) through (d) below did not appear in the Illinois Register. The Board did, however, discuss and propose them in its first-notice opinion. See First-Notice Op. at 20, 58, 68.
b. In lines 366-67, delete “may request that the Agency reconsider the modification or”.
c. In line 368, after the first “this Part” add “or may seek to extend the period for petitioning for a hearing under Section 40(a)(1) of the Act”.
d. In lines 368-69, delete “during the Agency’s reconsideration and during any appeal to the Board”.
54. In line 377, change "*one year after the effective date of this Part*" to an actual date.
Agree. We will propose a date during second notice once we have a better sense of when the Board will be able to adopt and file final rules.
55. In lines 386-387, change "*any rules or regulations adopted thereunder*" to "and 35 Ill. Adm. Code 1100".
Agree.
56. In line 392, change "regulations" to "rules".

- a. Agree.
b. In line 398, change “is maintained in accordance with” to “must be maintained under”.
57. In line 405, after "*disposed*" add "of".
Agree.
58. In lines 411 and 413, change the period to a semicolon.
Agree.
59. In line 415, change the period to "; or".
a. Agree.
b. In line 421, change “*shall be*” to “are”.
c. In line 424, change “*shall*” to “must”. Change “*accordance*” to “compliance”.
d. In line 426, change “*shall*” to “must”.
60. In line 437, change "must" to "may".
Agree.
61. In lines 441 and 449, delete "situation".
Agree.
62. In line 531, after "from" add "a".
Agree.
63. In line 556., after "decontamination equipment," add "and".
Agree.
64. In line 583, after "acceptance," add "an".
Agree.
65. In line 584, change "ground level" to "ground-level".
Agree.
66. In line 585, change "in accordance with" to "under".
a. Agree.
b. In line 605, change “*accordance*” to “*compliance*”.
67. In line 633, italicize "All putrescible recyclable GCDD".
Disagree as unitalicized “putrescible recyclable GCDD” is defined in Section 820.103.
68. In lines 634-635, italicize "transported off-site within 45 calendar days after receipt".
Disagree. Neither “transported” nor “within” is a quote from the statute.

But even if JCAR is now italicizing the *paraphrasing* of statutory text (which many readers might misconstrue as a quote), it's unnecessary to italicize here. The statutory citation at the end of the subsection adequately notifies the reader of the rule text's statutory basis.

Also, especially in a short passage like this subsection, a mix of italicized and unitalicized words risks distracting readers.

69. In line 637, italicize "All non-putrescible recyclable GCDD".
Disagree as unitalicized "putrescible recyclable GCDD" is defined in Section 820.103.
70. In line 638, italicize "transported off-site within". **a. Disagree. Neither "transported" nor "within" is a quote from the statute. See also No. 68.** Change "six" to "6". **b. Disagree.** Delete "calendar". **c. Agree.** Italicize "months after receipt". **d. Disagree.**
71. In line 660, delete the comma.
a. Agree.
b. In lines 670 and 674, change "accordance" to "compliance".
72. In line 677, change "White good components" to "Components of white goods".
Disagree. See 415 ILCS 5/22.28(c)(2).
73. In lines 692-693, italicize "tagging and daily recordkeeping procedures to demonstrate compliance".
Disagree. The word "daily" is not a quote from the statute. See also No. 68.
74. In line 697, italicize "identify the type".
Disagree. See No. 68.
75. In line 698, italicize "and transporter".
Disagree. See No. 68.
76. In line 702, italicize "identify the type" and "destination, transporter".
a. Disagree. See No. 68.
b. In line 712, change "shall" to "must".
77. In line 717, delete "of this Section".
a. Agree.
b. Change "shall" to "must".
78. In lines 745-746, change ", in accordance with" to "under".
a. Agree.
b. In line 759, after "GCDD" add a comma.
79. In line 762, after "closure" add a comma.

Agree.

80. In line 767, change "beginning" to "the beginning of".
a. Agree.
b. After “days” change “of” to “after”.
81. In line 771, after "from" add "the". **a. Agree. b. Change “from” to “after”.** Change "practically" to "practicably". **c. Agree.**
d. In line 790, change “In accordance with” to “Under”.
e. In line 792, change “accordance” to “compliance”.
f. In line 810, change “in accordance with” to “under”.
82. In lines 815-816, change "one year after the effective date of this Part" to an actual date.
Agree. We will propose a date during second notice once we have a better sense of when the Board will be able to adopt and file final rules.
83. In line 830, change "them" to "both".
a. Agree.
b. In line 844, change “accordance” to “compliance”.
84. In lines 854 and 855, change "their" to "the".
Agree.
85. In line 870, change "in accordance with" to "under".
Agree.
86. In line 876, change "in accordance with" to "under".
Disagree. Change “accordance” to “compliance”.
87. In line 898, change "(i)" to a colon, a carriage return, and subsection label "1)". **a. Agree.**
b. Change “accordance” to “compliance”. After "820.305" add a semicolon. **c. Agree.**
88. In line 899, change "(ii)" to a carriage return and subsection label "2)". **a. Agree.**
b. In lines 899-900, change “in accordance with” to “under”.
89. In line 920, after "trust" add a comma.
a. Disagree. See 89(b)’s change to line 919.
b. In lines 916 and 919, delete the comma.
90. In line 923, change "third party" to "third-party".
Agree.
91. In line 932, delete "expiration of". **a. Agree.** After "period" add "expires". **b. Agree.**
92. In lines 938-939, change "in accordance with" to "under".

Agree.

93. In line 942, change "prior to" to "before".
a. Agree.
b. Change “funds” to “fund as”.
94. In lines 942-943, change "in accordance with" to "under".
Agree.
95. In line 943, change "commences" to "starts".
a. Agree.
b. Strike the comma.
c. Change “recover” to “recovery”.
d. In line 948, change “commences” to “starts”.
96. In line 957, change "prior to" to "before".
Agree.
97. In line 958, change "in accordance with" to "under".
Agree.
98. In lines 968-969 and 970-971, change "in accordance with" to "under".
Agree.
99. In line 969, change "prior to" to "before".
Agree.
100. In line 971, delete "of this Section".
Agree.
101. In line 1005, change "with respect to" to "for".
Disagree. Change "with respect to" to "regarding".
102. In line 1016, change "excess funds:" to "Excess Funds".
Agree.
103. In lines 1020 and 1025, change "in excess of" to "over".
Disagree. Change "in excess of" to "exceeding".
104. In line 1029, change "pursuant to" to "under".
Agree.
105. In line 1032, change "in excess of" to "more than".
Disagree. Change "to be in excess of" to "as exceeding".
106. In line 1035, change "removal expenses:" to "Removal Expenses".

Agree.

107. In line 1046, change "are in accordance" to "comply".
Disagree. Change “in accordance with” to “for closure activities under”.
108. In line 1050, change "in accordance with" to "under".
Disagree. Change “in accordance with” to “for closure activities under”.
109. In line 1055, delete "in order".
Agree.
110. In lines 1067 and 1074, change "which" to "that".
a. Agree.
b. In line 1080, change “shall” to “must”.
111. In line 1089, change "amount:" to "Amount".
Agree.
112. In line 1110, change "in accordance with" to "under".
Disagree. Change “accordance” to “compliance”.
113. In line 1125, after "with" add "the".
Agree.
114. In line 1127, change "closure expenses:" to "Closure Expenses".
a. Agree.
b. In line 1134, change “accordance” to “compliance”.
115. In line 1153, change "which" to "that".
Agree.
116. In line 1158, delete the colon.
Agree.
117. In line 1177, after "upon" add "the".
Agree.
118. In line 1178, delete the comma.
Agree.

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE G: WASTE DISPOSAL
3 CHAPTER I: POLLUTION CONTROL BOARD
4 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING
5

6 PART 820
7 STANDARDS FOR GENERAL CONSTRUCTION OR DEMOLITION DEBRIS RECOVERY
8 FACILITIES
9

10 SUBPART A: GENERAL PROVISIONS
11

12	Section	
13	820.101	Purpose
14	820.102	Applicability
15	820.103	Definitions
16	820.104	Compliance with Applicable Law
17	820.105	Severability

18
19 SUBPART B: PERMIT APPLICATIONS
20

21	Section	
22	820.201	Scope and Applicability
23	820.202	Permit Application
24	820.203	Permit No Defense
25	820.204	Transfer of Permit
26	820.205	Agency Initiated Modification

27
28 SUBPART C: OPERATING STANDARDS
29

30	Section	
31	820.301	Prohibitions
32	820.302	General Operating Standards
33	820.303	Processing Program
34	820.304	Recordkeeping Requirements
35	820.305	Closure
36	820.306	Certification of Closure and Termination of Permit

37
38 SUBPART D: FINANCIAL ASSURANCE
39

40	Section	
41	820.401	General Provisions
42	820.402	Closure Cost Estimate
43	820.403	Release of Financial Institution

44 820.404 Trust Fund

45 820.405 Insurance

46

47 AUTHORITY: Implementing Section 22.38(n) and authorized by Section 27 of the Illinois
48 Environmental Protection Act [415 ILCS 5/22.38(n) and 27].

49

50 SOURCE: Adopted in R23-17 at 47 Ill. Reg. _____, effective _____.

51

52

SUBPART A: GENERAL PROVISIONS

53

Section 820.101 Purpose

54

55
56 The purpose of this Part is to establish the operating criteria and permitting process for general
57 construction or demolition debris ("GCDD") recovery facilities pursuant to Section 22.38 of the
58 Act.

59

Section 820.102 Applicability

60

61

62

- a) This Part applies to any site or facility that meets the definition of GCDD
recovery facility under Section 22.38 of the Act.

63

64

65

- b) This Part does not apply to:

66

67

68

69

70

- 1) Any site or facility that does not meet the definition of a GCDD recovery
facility, such as a facility that accepts material other than GCDD for
treatment, storage, or disposal;

71

72

73

74

- 2) A GCDD recovery facility that is located at a facility permitted under 35
Ill. Adm. Code Part 807, or Parts 811 through 814, and regulated under
that facility's permit.

75

76

Section 820.103 Definitions

77

78

79

80

Except as stated in this Section, or unless a different meaning of a word or term is clear from the
context, the definition of words or terms in this Part will be the same as the definition of the
same words or terms in the Environmental Protection Act:

81

"Act" means the Environmental Protection Act [415 ILCS 5].

82

83

84

"Agency" is the Environmental Protection Agency established by the Act. [415
ILCS 5/3.105]

85

86 "Adjudicated bankrupt" means the entry of any order for relief under Chapter 7 of
87 the United States Bankruptcy Code, 11 U.S.C. 101, et seq. ("the Code") under (a)
88 a voluntary petition under Section 301(b) of the Code; (b) an involuntary petition
89 under Section 303(h) of the Code; or (c) a conversion of a case under Chapter 11
90 to a case under Chapter 7 under Sections 348(a), 1112(a) and (b) of the Code.

91
92 "Applicant" means the person applying to the Agency for a permit for a general
93 construction or demolition debris recovery facility permit under this Part.

94
95 "*Board*" is the *Pollution Control Board established by the Act.* [415 ILCS
96 5/3.130]

97
98 "*Clean construction or demolition debris*" or "*CCDD*" means *uncontaminated*
99 *broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or*
100 *other asphalt pavement, or soil generated from construction or demolition*
101 *activities. CCDD does not include uncontaminated soil generated during*
102 *construction, remodeling, repair, and demolition of utilities, structures, and roads*
103 *provided the uncontaminated soil is not commingled with any clean construction*
104 *or demolition debris or other waste.* [415 ILCS 5/3.160(b)]

105
106 "*Disposal*" means *the discharge, deposit, injection, dumping, spilling, leaking or*
107 *placing of any waste or hazardous waste into or on any land or water or into any*
108 *well so that such waste or hazardous waste or any constituent thereof may enter*
109 *the environment or be emitted into the air or discharged into any waters,*
110 *including ground waters.* [415 ILCS 5/3.185]

111
112 "*General construction or demolition debris*" or "*GCDD*" means *non-hazardous,*
113 *uncontaminated materials resulting from the construction, remodeling, repair,*
114 *and demolition of utilities, structures, and roads, limited to the following: bricks,*
115 *concrete, and other masonry materials; soil; rock; wood, including non-*
116 *hazardous painted, treated, and coated wood and wood products; wall*
117 *coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing*
118 *shingles and other roof coverings; reclaimed or other asphalt pavement; glass;*
119 *plastics that are not sealed in a manner that conceals waste; electrical wiring and*
120 *components containing no hazardous substances; and corrugated cardboard,*
121 *pipng or metals incidental to any of those materials. GCDD does not include*
122 *uncontaminated soil generated during construction, remodeling, repair, and*
123 *demolition of utilities, structures, and roads provided the uncontaminated soil is*
124 *not commingled with any GCDD or other waste. To the extent allowed by federal*
125 *law, uncontaminated concrete with protruding rebar shall be considered CCDD*
126 *and shall not be considered "waste" if it is separated or processed and returned*
127 *to the economic mainstream in the form of raw materials or products within 4*
128 *years of its generation, if it is not speculatively accumulated and, if used as a fill*

129 *material, it is used in accordance with Section 3.160(b)(i) of the Act. [415 ILCS*
130 *5/3.160(a)]*

131
132 *"General construction or demolition debris recovery facility" or "GCDD recovery*
133 *facility" means a site or facility used to store or treat exclusively GCDD,*
134 *including, but not limited to, sorting, separating, or transferring, for recycling,*
135 *reclamation, or reuse. For purposes of this definition, "facility" means a site and*
136 *all structures, equipment, and fixtures on a site used in connection with, or to*
137 *facilitate, GCDD recovery operations. For purposes of this definition, treatment*
138 *includes altering the physical nature of the GCDD, such as by size reduction,*
139 *crushing, grinding, or homogenization, but does not include treatment designed to*
140 *change the chemical nature of the general construction or demolition debris.*
141 *[415 ILCS 5/3.160(a-1)]*

142
143 *"Landscape waste" means all accumulations of grass or shrubbery cuttings,*
144 *leaves, tree limbs and other materials accumulated as the result of the care of*
145 *lawns, shrubbery, vines and trees. [415 ILCS 5/3.270]*

146
147 *"Malodor" means an odor caused by one or more contaminant emissions into the*
148 *atmosphere from a GCDD recovery facility that is in sufficient quantities and of*
149 *such characteristics and duration as to be described as an offensive odor to a*
150 *reasonable person.*

151
152 *"Operator" means the person responsible for the operation and maintenance of a*
153 *GCDD recovery facility.*

154
155 *"Owner" means a person who has an interest, directly or indirectly, in the GCDD*
156 *recovery facility or who has an interest, directly or indirectly, in land, including a*
157 *leasehold interest, on which a person operates and maintains a GCDD recovery*
158 *facility. The "owner" is the "operator" if there is no other person who is operating*
159 *and maintaining a GCDD recovery facility.*

160
161 *"Person" means any individual, partnership, co-partnership, firm, company,*
162 *limited liability company, corporation, association, joint stock company, trust,*
163 *estate, political subdivision, State agency, or any other legal entity, or their legal*
164 *representative, agent or assigns. [415 ILCS 5/3.315]*

165
166 *"Putrescible recyclable GCDD" means GCDD material containing organic matter*
167 *capable of being decomposed by microorganisms so as to cause a malodor, gases,*
168 *or other offensive conditions, or that can provide food for birds and vectors.*

169
170 *"Recyclable GCDD" means GCDD that is being reclaimed from the GCDD waste*
171 *stream and (i) is rendered reusable and is reused or (ii) would otherwise be*

172 *disposed of or discarded but is collected, separated, or processed and returned to*
173 *the economic mainstream in the form of raw materials or products. "Recyclable*
174 *GCDD" does not include GCDD that is (i) recovered for use as fuel or that is*
175 *otherwise incinerated or burned, (ii) buried or used as fill material, including, but*
176 *not limited to, the use of any clean construction or demolition debris fraction of*
177 *general construction or demolition debris as fill material under subsection (b) of*
178 *Section 3.160 of the Act or at a clean construction or demolition debris fill*
179 *operation under Section 22.51 of the Act, or (iii) disposed of at a landfill. [415*
180 *ILCS 5/22.38(c)]*

181
182 *"Recycling, reclamation, or reuse" means a method, technique, or process*
183 *designed to remove any contaminant from waste so as to render such waste*
184 *reusable, or any process by which materials that would otherwise be disposed of*
185 *or discarded are collected, separated or processed and returned to the economic*
186 *mainstream in the form of raw materials or products. [415 ILCS 5/3.380]*

187
188 *"Run-off" means water resulting from precipitation that flows overland before it*
189 *enters a defined stream channel, any portion of such overland flow that infiltrates*
190 *into the ground before it reaches the stream channel, and any precipitation that*
191 *falls directly into a stream channel.*

192
193 *"Special waste" means special waste as defined under Section 3.475 of the Act.*

194
195 *"Wood recovered for use as fuel" means wood that is recovered from the GCDD*
196 *waste stream for use as fuel, as authorized by the applicable state or federal*
197 *environmental regulatory authority, and supplied only to intermediate processing*
198 *facilities for sizing, or to combustion facilities for use as fuel, that have obtained*
199 *all necessary waste management and air permits for handling and combustion of*
200 *the fuel. [415 ILCS 5/22.38(e)]*

201
202 **Section 820.104 Compliance with Applicable Law**

203
204 Any person subject to this Part must comply with all applicable State and federal laws and
205 regulations, including State and federal laws and regulations that govern the collection,
206 transportation, and disposal of general construction or demolition debris.

207
208 **Section 820.105 Severability**

209
210 If any provision of this Part or its application to any person or under any circumstances is
211 adjudged invalid, that adjudication must not affect the validity of this Part as a whole or of any
212 portion not adjudged invalid.

213
214 **SUBPART B: PERMIT APPLICATIONS**

215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257

Section 820.201 Scope and Applicability

- a) Except as specifically exempted by Section 21(d) of the Act, any person that owns or operates a GCDD recovery facility must submit to the Agency an application for a permit required by Section 22.38 of the Act. The application must contain the information required by this Part and Section 39(a) of the Act.
 - 1) *An owner or operator that first received GCDD prior to August 24, 2009, and therefore was not required to obtain a permit until the enactment of P.A. 102-0310, must submit to the Agency, no later than 6 months after the effective date of this Part, a permit application for a GCDD recovery facility. [415 ILCS 5/22.38(b)(11)]*
 - 2) An owner or operator of a GCDD recovery facility that, on the date this Part takes effect, has an existing permit issued under Section 22.38 of the Act, must submit an application to modify their permit no later than one year after the effective date of this Part.
- b) *Beginning one year after the effective date of rules adopted by the Board under this Part, a person must not own or operate a GCDD recovery facility without a permit issued by the Agency. [415 ILCS 5/22.38(l)]*

Section 820.202 Permit Application

- a) All permit applications must be made on Agency forms and be mailed or delivered to the address designated by the Agency.
- b) All permit applications must be signed by the owner, the operator, and the property owner if different than the GCDD recovery facility owner, or by their duly authorized agent or agents. Each application containing the signature of an authorized agent must be accompanied by an oath or affidavit attesting to each agent's authority to sign the application and must be notarized.
- c) Each application must demonstrate that the GCDD recovery facility and its operation will comply with the requirements of the Act and this Part, and must contain:
 - 1) a facility map scaled to clearly show:
 - A) the facility property, all adjacent property, and all property within at least 1000 meters of the boundary of the facility;

- 258 B) all surface waters within 1000 meters of the boundary of the
259 facility;
260
261 C) all rivers designated for protection under the Wild and Scenic
262 Rivers Act (16 U.S.C. 1271, et seq.);
263
264 D) the limits of all 100-year floodplains within 1000 meters of the
265 boundary of the facility;
266
267 E) any wellhead protection areas under Section 1428 of the Safe
268 Drinking Water Act (SDWA), 42 U.S.C. 300f, and any sole source
269 aquifer designated by the United States Environmental Protection
270 Agency under to Section 1424(e) of the SDWA;
271
272 F) boundaries of all areas in which GCDD recovery operations will
273 occur;
274
275 G) all structures inside the facility boundaries;
276
277 H) all roads and other areas of travel in and around the facility;
278
279 I) devices for controlling access to the facility;
280
281 J) devices for controlling litter and dust at the facility;
282
283 K) fire protection equipment;
284
285 L) devices for surface water control; and
286
287 M) utilities.
288
289 2) a legal description of the facility boundary;
290
291 3) a certification of ownership of the property or a copy of the lease of the
292 property;
293
294 4) an estimate of the maximum total amount of GCDD that can be
295 maintained at the facility at any single time; and
296
297 5) a closure cost estimate and proof of financial assurance required under
298 Subpart D of this Part.
299
300 d) Completeness

- 301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
- 1) An application is not considered filed until the Agency has received, at the designated address, all information, documents, and authorization, using Agency forms and providing the content required by this Part.
 - 2) If the Agency fails to notify the applicant, within 45 days after receiving an application, that the application is incomplete, and of the reasons, the application will be considered to have been filed on the date received by the Agency.
 - 3) The Agency's notification that the application is incomplete is a denial of the permit for purposes of review under Section 40 of the Act.
- e) If the Agency fails to take final action on the application within 90 days from the filing of the application, the applicant may consider the permit granted on the 91st day after the application was filed.
 - f) Any applicant for a permit may waive the requirement that the Agency take final action within 90 days after filing the application. The permit applicant's waiver should be submitted in writing to the Agency at the address identified in the permit application forms.
 - g) The Agency will send all notices of final action by registered or certified mail, return receipt requested. Final action is considered to have taken place on the date the notice is mailed.
 - h) Agency decisions regarding permit applications may be appealed to the Board in accordance with Section 40 of the Act.

330 **Section 820.203 Permit No Defense**

331
332 The issuance of a permit to, or possession of a permit by, an owner or operator will not constitute
333 a defense to a violation of the Act or any Board regulations, except for the prohibition against
334 owning or operating a GCDD recovery facility without a permit.
335

336 **Section 820.204 Transfer of Permit**

- 337
338
339
340
341
342
- a) The Agency may transfer a GCDD recovery facility permit to a new owner or operator only through a permit modification under this Part to identify the new permittee and incorporate other requirements necessary under the Act and this Part.

- 343 b) The existing owner and operator or their duly authorized agent or agents and the
344 new owner and operator or their duly authorized agent or agents must sign the
345 application for a permit modification.
346
- 347 c) The new owner or operator the permit is transferred to must comply with all terms
348 and conditions specified in the transferred permit.
349

350 **Section 820.205 Agency Initiated Modification**
351

- 352 a) The Agency may modify a permit under the following circumstances:
353
- 354 1) Discovery of a typographical, administrative, or calculation error;
355
 - 356 2) Discovery that a determination or condition was based upon false or
357 misleading information;
358
 - 359 3) An order of the Board issued in an action brought pursuant to Title VII, IX
360 or X of the Act; or
361
 - 362 4) Promulgation of new statutes or regulations affecting the permit.
363
- 364 b) Modifications initiated by the Agency do not become effective until 45 days after
365 the owner or operator receives it, unless the modification is stayed during the
366 pendency of an appeal to the Board. The owner or operator may request that the
367 Agency reconsider the modification or may file a petition for Board hearing under
368 this Part. All other time periods and procedures in this Part apply during the
369 Agency's reconsideration and during any appeal to the Board.
370

371 **SUBPART C: OPERATING STANDARDS**
372

373 **Section 820.301 Prohibitions**
374

375 A person must not:
376

- 377 a) *Beginning one year after the effective date of this Part, own or operate a GCDD*
378 *recovery facility without a permit issued by the Agency. [415 ILCS 5/22.38(l)]*
379
- 380 b) *Cause or allow the acceptance of any waste at a GCDD recovery facility, other*
381 *than GCDD. [415 ILCS 5/22.38(j)]*
382
- 383 c) *Cause or allow the deposit or other placement of any GCDD that is received at a*
384 *GCDD recovery facility, including any CCDD fraction, into or on any land or*
385 *water. However, any CCDD fraction may be used as fill or road construction*

386 *material at a CCDD fill operation under Section 22.51 and any rules or regulations*
387 *adopted thereunder if the CCDD is separated and managed separately from other*
388 *GCDD and otherwise meets the requirements applicable to CCDD at a CCDD fill*
389 *operation. [415 ILCS 5/22.38(k)]*
390

391 d) *Cause or allow the storage or treatment of GCDD at a GCDD recovery facility in*
392 *violation of the Act, this Part, any other regulations or standards adopted under*
393 *the Act, or any condition of a permit issued under this Act. [415 ILCS*
394 *5/22.38(m)]*
395

396 e) *Cause or allow, at any one time, the accumulation of GCDD at the GCDD*
397 *recovery facility in an amount that exceeds the amount for which financial*
398 *assurance is maintained in accordance with Subpart D.*
399

400 f) *Operate a GCDD recovery facility:*
401

402 1) *Without the maintenance of documentation identifying the hauler,*
403 *generator, place of origin of the debris or soil, the weight or volume of the*
404 *debris or soil, and the location, owner, and operator of the facility where*
405 *the debris or soil was transferred, disposed, recycled, or treated. [415*
406 *ILCS 5/21(w)]*
407

408 2) *In a manner that causes or allows:*
409

410 A) *Noise outside the GCDD recovery facility that violates 35 Ill.*
411 *Adm. Code 900 through 905 or Section 24 of the Act.*
412

413 B) *Vector proliferation.*
414

415 C) *Litter accumulation.*
416

417 D) *Maladors outside the GCDD recovery facility.*
418

419 **Section 820.302 General Operating Standards**
420

421 a) *Compliance with Local Requirements. GCDD recovery facilities shall be subject*
422 *to local zoning, ordinance, and land use requirements. [415 ILCS 5/22.38(a)]*
423

424 b) *Location Standards. GCDD recovery facilities shall be located in accordance*
425 *with local zoning requirements or, in the absence of local zoning requirements,*
426 *shall be located so that no part of the GCCD recovery facility boundary is closer*
427 *than 1,320 feet from the nearest property zoned primarily for residential use. [415*
428 *ILCS 5/22.38(a)]*

- 429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
- c) Minimum Recycling Rate. The owner or operator of a GCDD recovery facility must *ensure that no less than 40% of the total GCDD received at the facility on a rolling 12-month average basis is recyclable GCDD.* [415 ILCS 5/22.38(b)(0.5)] For purposes of this subsection (c), GCDD is measured by weight.
 - d) Operating Hours
 - 1) GCDD must be received at the GCDD recovery facility only during operating hours established by a permit issued under this Part.
 - 2) If a GCCD recovery facility receives GCDD outside of permitted operating hours to respond to an emergency situation, then the GCCD recovery facility operating records must maintain a written record of the date, time, and reason the GCDD recovery facility received the GCDD. The owner or operator must also notify the Agency’s Regional Office responsible for inspecting the GCDD recovery facility on the next operating day within the GCDD recovery facility's permitted operating hours.
 - 3) If the emergency situation requires receiving GCDD outside of permitted operating hours for more than one day, then the owner or operator of the GCDD recovery facility must obtain prior approval from the Agency to extend emergency operating hours beyond the first day.
 - e) Equipment. Equipment necessary to achieve and maintain compliance with this Part must be maintained and available for use at the facility during all hours of operation.
 - f) Utilities. All utilities, including electricity, heat, interior and exterior lighting, and communications equipment, necessary to operate in compliance with the requirements of this Part, must be available at the facility at all times.
 - g) Maintenance. Adequate shelter, sanitary facilities, and emergency communications for employees must be maintained at the GCDD recovery facility at all times.
 - h) Dust Control. Wind dispersal of particulate matter must be prevented.
 - i) Fire Protection. Equipment necessary to respond to fires and provide emergency notifications to the nearest fire department must be maintained at the GCDD recovery facility.

- 472 j) Vehicle Safety Measures
473
474 1) The GCDD recovery facility must maintain roads and traffic flow patterns
475 adequate for the type and weight of traffic using the facility and onsite
476 equipment.
477
478 2) The GCDD recovery facility must maintain sufficient area to minimize
479 traffic congestion, provide for safe operation, and allow for queuing of
480 hauling vehicles.
481
482 3) The GCDD recovery facility must use safety mechanisms to prevent
483 vehicles from backing into fuel storage tanks, equipment, or other
484 structures.
485
- 486 k) Surface Water Drainage. Measures to ensure surface water drainage is diverted
487 from areas where GCDD or other materials are stored must be implemented at the
488 facility. Surface water drainage must be controlled so adjacent properties are not
489 adversely impacted.
490
- 491 l) Run-on and Run-off Control
492
493 1) The owner or operator must operate the facility in a manner that prevents
494 exposure of any materials to run-on or run-off.
495
496 2) Run-off from roadways and parking areas must be controlled using storm
497 sewers or must be compatible with natural drainage for the facility.
498
499 3) Run-off from roadways and parking areas must not carry GCDD, CCDD,
500 waste, or any of their constituents to soil, surface water, or groundwater.
501
- 502 m) Boundary Control
503
504 1) Access to the GCDD recovery facility must be restricted to prevent
505 unauthorized entry.
506
507 2) The GCDD recovery facility must post at the entrance to the GCDD
508 recovery facility stating, at a minimum:
509
510 A) that the GCDD recovery facility only accepts GCDD;
511
512 B) the GCDD recovery facility's permit number;
513
514 C) the GCDD recovery facility's hours of operation;

- 515
516
517
518
519
520
521
522
523
524
- D) the penalty for unauthorized trespassing and dumping;
 - E) the name and telephone number of the appropriate emergency response agency or agencies to deal with emergencies and other problems; and
 - F) the name, address, and telephone number of the GCDD recovery facility's operator.
- 525 n) Contingency Plan
- 526
- 1) The owner or operator of a GCDD recovery facility must establish and maintain a Contingency Plan that:
 - 527
 - 528
 - 529
 - 530 A) minimizes the hazards to human health and the environment from
 - 531 fires and run-off of contaminants resulting from fire at the GCDD
 - 532 recovery facility;
 - 533
 - 534 B) is carried out immediately whenever there is a fire;
 - 535
 - 536 C) describes the actions GCDD recovery facility personnel must take
 - 537 in response to fires and run-off resulting from fires;
 - 538
 - 539 D) minimizes the hazards to human health and the environment from
 - 540 vectors and other nuisance organisms that may breed or be present
 - 541 at the GCDD recovery facility;
 - 542
 - 543 E) minimizes the hazards to human health and the environment from
 - 544 flooding in the event of a 100-year flood. The GCDD recovery
 - 545 facility must not restrict the flow of a 100-year flood, or reduce the
 - 546 temporary water storage capacity of the 100-year floodplain,
 - 547 unless measures are taken to provide alternative storage capacity.
 - 548
 - 549 F) describes evacuation procedures, including evacuation signals,
 - 550 primary evacuation routes, and alternate evacuation routes to be
 - 551 used when the primary routes could be blocked;
 - 552
 - 553 G) contains an up-to-date emergency equipment list that identifies all
 - 554 emergency equipment at the GCDD recovery facility, such as fire-
 - 555 extinguishing systems, fire-suppression material, spill-control
 - 556 equipment, decontamination equipment, communication and alarm

557 systems, and describes the physical location and capabilities of
558 each listed item; and

559
560 H) includes the name, address, and telephone number of an employee
561 designated as the primary emergency coordinator responsible for
562 coordinating emergency response measures at the GCDD recovery
563 facility, as well as an up-to-date list of all alternate emergency
564 coordinators, listed in the order they will assume responsibility for
565 coordinating emergency response measures at the GCDD recovery
566 facility if the primary emergency coordinator or another alternate
567 emergency coordinator is unavailable.
568

569 2) The owner or operator must submit a copy of the contingency plan, and all
570 revisions to the plan, to the local fire department and keep a copy of the
571 same on-site for review by the Agency. The owner or operator must keep
572 in the operating record documentation demonstrating that the plan and all
573 plan revisions have been submitted to the fire department.
574

575 **Section 820.303 Processing Program**

576
577 a) The owner or operator of a GCDD recovery facility must inspect every load of
578 material transported to the GCDD recovery facility to ensure only GCDD is
579 accepted at the GCDD recovery facility.
580

581 1) Each load inspection must include:

582
583 A) Before acceptance, inspection of each load using an elevated
584 structure, a designated ground level inspection area, or another
585 acceptable method specified in a permit issued in accordance with
586 this Part.
587

588 B) Maintaining documentation reflecting the results of each load
589 inspection, including the date the load was received, the amount of
590 GCDD, the name of the transporter, the name of the generator, the
591 location of the site of origin of the material, whether the load was
592 accepted or rejected, and the name of the facility inspector.
593

594 2) Loads of material other than GCDD delivered to the GCDD recovery
595 facility must be rejected. The driver of the rejected load must be presented
596 with a written notice that includes the following:
597

598 A) The date of the attempted delivery;
599

- 600 B) A statement that only GCDD is accepted at the GCDD recovery
601 facility;
602
603 C) The reasons for rejecting the load; and
604
605 D) A copy of the rejection notice must be maintained in accordance
606 with Section 820.304.
607
608 3) If material other than GCDD is discovered to have been accepted at the
609 GCDD recovery facility, the material must be removed in compliance with
610 this Subpart.
611
612 b) Before any mechanical sorting, separating, grinding, or other processing, all
613 drywall and other wallboard containing gypsum or sulfur must be removed from
614 the GCDD received to the extent practicable. The drywall and other wallboard
615 containing gypsum or sulfur must be stored in closed, structurally sound, non-
616 leaking containers that are in good condition (e.g., no severe rusting, apparent
617 structural defects, or deterioration), prevent the infiltration of precipitation, and
618 prevent releases during storage, handling, and transportation.
619
620 1) If being recycled, the drywall and other wallboard containing gypsum or
621 sulfur must be transported off-site within 45 calendar days after receipt.
622
623 2) If not being recycled, the drywall and other wallboard containing gypsum
624 or sulfur must be transported off-site within 72 hours after receipt.
625
626 c) Acceptable Materials
627
628 1) Within 48 hours after receipt of the GCDD at the GCDD recovery facility,
629 the owner or operator must sort the GCDD to separate the (i) recyclable
630 GCDD and (ii) wood being recovered for use as fuel from all other
631 GCDD. [415 ILCS 5/22.38(b)(1)]
632
633 2) All putrescible recyclable GCDD and all wood recovered for use as fuel
634 that is separated from other GCDD must be transported off-site within 45
635 calendar days after receipt. [415 ILCS 5/22.38(b)(4)]
636
637 3) All non-putrescible recyclable GCDD that is separated from other GCDD
638 must be transported off-site within six calendar months after receipt. [415
639 ILCS 5/22.38(b)(5)]
640
641 4) All GCDD other than the separated recyclable GCDD and wood being
642 recovered for use as fuel must be stored in containers meeting the

643 requirements of subsection (b) and, within 72 hours after receipt, must be
644 transported off-site for disposal.

645
646 5) CCDD and uncontaminated soil that is separated from GCDD received at
647 the GCDD recovery facility may be transported off-site for use complying
648 with the Act and rules adopted under the Act.

649
650 d) Unacceptable Materials. Any unacceptable materials discovered to be mixed with
651 GCDD after it is accepted at the GCDD recovery facility must be immediately
652 separated from the GCDD and removed from the GCDD recovery facility within
653 72 hours after receipt. The separated unacceptable material must be managed as
654 follows:

655
656 1) Landscape waste must be transported to a facility permitted to accept
657 landscape waste.

658
659 2) Lead-acid batteries must be transported either to a drop-off center
660 handling the waste, or to a lead-acid battery retailer.

661
662 3) Lithium-ion batteries must be transported to a facility capable of handling
663 the waste.

664
665 4) Special wastes must be containerized separately and removed from the
666 facility as soon as possible by an appropriately licensed special waste
667 hauler. Special wastes must be transported to a GCDD recovery facility
668 permitted to accept special waste.

669
670 5) Asbestos and asbestos debris must be managed in accordance with the
671 National Emission Standards for Hazardous Air Pollutants (NESHAP)
672 regulations.

673
674 6) Used and waste tires must be managed in accordance with Title XVI of
675 the Act.

676
677 7) White good components must be managed in compliance with Section
678 22.28 of the Act.

679
680 8) All other unacceptable materials must be managed in compliance with 35
681 Ill. Adm. Code Subtitle G.

682
683 9) Documentation must be maintained reflecting each type of unacceptable
684 material managed under subsections (d)(1) through (d)(8), including: the
685 date the material was received, identified, and separated; the date the

686 material was transported offsite; the amount of unacceptable material; the
687 name of the transporter; the name of the generator; and the name of the
688 offsite facility receiving the unacceptable material.
689

690 **Section 820.304 Recordkeeping Requirements**

- 691
- 692 a) The owner or operator of a GCDD recovery facility must employ tagging and
693 daily recordkeeping procedures to demonstrate compliance with the Act and this
694 Part. [415 ILCS 5/22.38(b)(6)]
695
- 696 1) Tagging and recordkeeping of material accepted at the GCDD recovery
697 facility must identify the type, weight, source or place of origin, generator,
698 and transporter or hauler of the material. [415 ILCS 5/21(w) and
699 22.38(b)(6)]
700
- 701 2) Tagging and recordkeeping of material transported from the GCDD
702 recovery facility must identify the type, weight, destination, transporter of
703 the material, and the owner and operator of the destination facility. [415
704 ILCS 5/21(w) and 22.38(b)(6)]
705
- 706 3) Procedures for recordkeeping of rejected loads must meet the
707 requirements of Section 820.303(a)(1)(B).
708
- 709 4) Procedures for recordkeeping of unacceptable materials transported to an
710 offsite facility must meet the requirements of Section 820.303(d)(9).
711
- 712 b) Records required under the Act and this Part *shall be maintained in a form and*
713 *format prescribed by the Agency for a minimum of 3 years.* [415 ILCS 5/21(w)
714 and 22.38(b)(6)]
715
- 716 c) *No later than every October 1, January 1, April 1, and July 1, the records*
717 *required by subsection (a) of this Section shall be summarized in quarterly*
718 *reports submitted to the Agency in a form and format prescribed by the Agency.*
719 [415 ILCS 5/22.38(b)(6)].
720
- 721 1) A quarterly report summarizing the months of January, February, and
722 March is due no later than July 1. A quarterly report summarizing the
723 months of April, May, and June is due no later than October 1. A quarterly
724 report summarizing the months of July, August, and September is due no
725 later than January 1. A quarterly report summarizing the months of
726 October, November, and December is due no later than April 1.
727

- 728 2) Reports must be maintained until certification of closure by the Agency
729 complying with Section 820.305.
730
731 d) Operating Record
732
733 1) The owner or operator of a GCDD recovery facility must maintain an
734 operating record at the GCDD recovery facility. Information maintained
735 in the operating record must include the following:
736
737 A) Records required to be maintained by the GCDD recovery facility
738 under the Act and this Part;
739
740 B) Any information submitted to the Agency under this Part,
741 including copies of all permits, permit applications, and reports;
742
743 C) The Contingency Plan for the GCDD recovery facility and
744 documentation demonstrating that the plan and all plan revisions
745 have been submitted to the local fire department, in accordance
746 with Section 820.302(n); and
747
748 D) Written procedures for load checking and load rejection
749 notifications required under Section 820.303.
750
751 2) The owner or operator of a GCDD facility must make the operating record
752 available for inspection and copying by the Agency and units of local
753 government upon request during the GCDD recovery facility's normal
754 business hours.
755

756 **Section 820.305 Closure**
757

- 758 a) Within 30 days after the date the GCDD recovery facility receives the final load
759 of GCDD the owner or operator must begin closure activities and submit to the
760 Agency a notice of closure.
761
762 b) During closure all GCDD and all other materials at the GCDD recovery facility
763 must be removed to an appropriately permitted transfer, treatment, storage, or
764 disposal facility.
765
766 c) The owner or operator must complete closure activities for the GCDD recovery
767 facility within 180 days of beginning closure unless the Agency grants an
768 extension of the closure period. The Agency may grant an extension of the
769 closure period if the owner or operator demonstrates that:
770

- 771 1) closure cannot be practically completed within 180 days from beginning
772 of closure; and
- 773
- 774 2) the owner or operator has taken and will continue to take all necessary
775 steps to prevent threats to human health and the environment from the
776 unclosed facility.
- 777

778 **Section 820.306 Certification of Closure and Termination of Permit**

- 779
- 780 a) Within 45 calendar days after completing closure activities, the owner or operator
781 of a GCDD recovery facility must submit to the Agency:
782
- 783 1) Documentation concerning the closure of the GCDD recovery facility that
784 demonstrates compliance with the Act and this Part and the date closure
785 was completed.
- 786
- 787 2) An affidavit by the owner or operator certifying that the GCDD recovery
788 facility has been closed in compliance with the Act and this Part.
- 789
- 790 b) In accordance with Section 39(a) of the Act, when the Agency determines, based
791 on information received under subsection (a) and any Agency site inspection, that
792 the GCDD recovery facility has been closed in accordance with the requirements
793 of the Act and this Part, the Agency must notify the owner or operator in writing
794 that:
795
- 796 1) The GCDD recovery facility permit is terminated; and
- 797
- 798 2) The GCDD recovery facility is no longer required to maintain financial
799 assurance for closure of the site.
- 800
- 801 c) The owner or operator may consider the Agency action under this Section as a
802 denial or grant of a permit with conditions for purposes of appeal under Section
803 40 of the Act.
- 804

805 **SUBPART D: FINANCIAL ASSURANCE**

806

807 **Section 820.401 General Provisions**

- 808
- 809 a) This Subpart states the procedures by which the owner or operator of a GCDD
810 recovery facility must provide financial assurance for closure in accordance with
811 Section 820.305.
- 812
- 813 b) Amount

- 814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
- 1) Except as provided in subsection (b)(2), beginning one year after the effective date of this Part the owner or operator of a GCDD recovery facility must at all times maintain financial assurance in an amount equal to or greater than the current approved closure cost estimate calculated under Section 820.402.
 - 2) Within 60 days after the current approved closure cost estimate increases or the value of the trust fund established under Section 820.404 decreases, the owner or operator must increase the total amount of financial assurance to an amount that is equal to or greater than the current approved closure cost estimate calculated under Section 820.402.
- c) Mechanisms
- 1) The owner or operator may use a trust fund, insurance, or a combination of them as financial assurance for closure of a GCDD recovery facility.
 - 2) If an owner or operator uses multiple financial assurance mechanisms, the combination of mechanisms must provide financial assurance for an amount at least equal to the current approved closure cost estimate.
 - 3) An owner or operator may use a financial assurance mechanism to meet the requirements of this Subpart for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to close all of the owner's or operator's GCDD recovery facilities in accordance with Section 820.305.
- d) The Agency may pursue legal action in any court of competent jurisdiction to enforce its rights under financial instruments used to provide the financial assurance required under this Subpart. The filing of an enforcement action before the Board is not a condition precedent to such an Agency action, except when this Subpart or the terms of the instrument provide otherwise.
- e) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 103 and 104, the Board may order that an owner or operator modify their financial assurance or order that proceeds from financial assurance be applied to the closure of their GCDD recovery facility.

857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899

- f) The following Agency actions may be appealed to the Board as a permit denial under 35 Ill. Adm. Code 105:
 - 1) a refusal to accept financial assurance tendered by the owner or operator;
 - 2) a refusal to release the owner or operator from the requirement to maintain financial assurance; or
 - 3) a refusal to release excess funds from a trust.

Section 820.402 Closure Cost Estimate

- a) A written estimate of the cost to complete closure in accordance with Section 820.305 for the maximum amount of GCDD that will be accumulated at the GCDD recovery facility at any time must be submitted to the Agency for approval as part of each permit application.
- b) The cost estimate must include all costs for all activities necessary to complete closure in accordance with Section 820.305.
- c) Before making or having made any change at the GCDD recovery facility that would increase the closure cost estimate, the owner or operator must revise the cost estimate and submit the revised closure cost estimate as a permit application to the Agency. The Agency’s issuance of the permit with the revised cost estimate constitutes approval of the cost estimate.
- d) By January 1, 2024, and every January 1 after, the owner or operator of a GCDD recovery facility must certify to the Agency on Agency forms that the most recent approved cost estimate has not increased.

Section 820.403 Release of Financial Institution

The Agency must release a trustee, bank, or other financial institution as soon as practicable after the owner or operator makes a written request to the Agency for release and demonstrates that either one of the following events has occurred:

- a) the owner or operator has substituted alternate financial assurance that meets the requirements of this Subpart; or
- b) the Agency has released the owner or operator from the requirements of this Subpart following (i) completion of closure in accordance with Section 820.305 and (ii) Agency certification of closure of the GCDD recovery facility in

900 accordance with Section 820.306(b).

901

902 **Section 820.404 Trust Fund**

903

904 a) An owner or operator may satisfy the requirements of this Subpart by establishing
905 a trust fund that conforms to the requirements of this Section and submitting an
906 original signed duplicate of the trust agreement to the Agency.

907

908 b) The trustee must be an entity that has the authority to act as a trustee and whose
909 trust operations are regulated and examined by a federal or state agency.

910

911 c) Trust Agreement

912

913 1) The trust agreement must be on Agency forms and must be accompanied
914 by a formal certification of acknowledgment on an Agency form.

915

916 2) The trust agreement must be irrevocable and must, contain provisions
917 addressing establishing, managing, and terminating the trust.

918

919 3) The trust agreement must include a schedule listing, the GCDD recovery
920 facility or facilities covered by the trust and the current approved removal
921 cost for each of those GCDD recovery facilities.

922

923 4) The trust agreement must prohibit third party access to the trust funds
924 other than as provided in the trust agreement. This prohibition must be in
925 the Agency form and must be updated within 60 days after a change in the
926 amount of the current approved removal cost for any GCDD recovery
927 facility covered by the trust.

928

929 d) Payments into the Trust

930

931 1) The owner or operator must make a payment into the trust fund each year
932 during the pay-in period. However, after expiration of the pay-in period,
933 neither the owner nor the operator may use a pay-in period to fund the
934 trust and must instead make a lump sum payment to further fund the trust.

935

936 2) Pay-in Period

937

938 A) The pay-in period for a trust fund used as financial assurance in
939 accordance with this Part is three years.

940

941 B) The pay-in period for any facility that has not accepted GCDD
942 prior to establishing a trust funds financial assurance in accordance

- 943 with this Part, commences on the date any of the GCDD recover
944 facilities covered by the trust agreement first receives GCDD.
945
- 946 C) The pay-in period for any facility operating at the time the owner
947 or operator establishes a trust fund as the financial assurance
948 mechanism commences on the date the trust fund is established.
949
- 950 3) Annual payments are determined by subtracting the value of the trust fund
951 from the current approved cost estimate for all facilities covered by the
952 trust agreement and dividing the difference by the number of years
953 remaining in the pay-in period.
954
- 955 4) First Annual Payment
956
- 957 A) For any facility that has not accepted GCDD prior to establishing a
958 trust fund as financial assurance in accordance with this Part, the
959 owner or operator must make the first annual payment before
960 GCDD is received at a facility covered by the trust agreement.
961 Before receiving GCDD at a facility covered by the trust
962 agreement, the owner or operator must submit to the Agency a
963 receipt from the trustee for the first annual payment.
964
- 965 B) For any facility operating at the time the owner or operator
966 establishes a trust fund as the financial assurance mechanism, the
967 owner or operator must make the first annual payment immediately
968 upon establishing the trust fund for use as financial assurance in
969 accordance with this Part. The first payment must be made prior to
970 submitting an original signed duplicate to the Agency in
971 accordance with subsection (a) of this Section. The owner or
972 operator must submit to the Agency a receipt from the trustee for
973 the first annual payment at the time the original signed duplicate is
974 submitted to the Agency.
975
- 976 5) Subsequent annual payments must be made within 30 days after each
977 anniversary of the first payment.
978
- 979 6) The owner or operator may either accelerate payments into the trust fund
980 or may deposit the full amount of the current approved removal cost
981 estimate at the time the fund is established.
982
- 983 7) The owner or operator must maintain the value of the fund at no less than
984 the value the fund would have if annual payments were made as specified
985 in subsection (d)(3).

- 986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
- 8) If the owner or operator establishes a trust fund after having used one or more alternative mechanisms, the first payment must be at least the amount the fund would contain if the trust fund were established initially and payments were made as provided in subsection (d)(3).
 - e) Evaluation by Trustee
 - 1) The trustee must evaluate the trust fund annually as of the anniversary of the day the trust was created or on another date provided in the agreement.
 - 2) Within 30 days after the evaluation date each year, the trustee must furnish the owner or operator and the Agency with a statement confirming the value of the trust fund.
 - 3) The failure of the owner or operator to object in writing to the trustee within 90 days after the trustee furnishes the statement to the owner or operator and the Agency constitutes a conclusively binding assent by the owner or operator, which bars the owner or operator from asserting any claim or liability against the trustee with respect to matters disclosed in the statement.
 - f) After the pay-in period is completed, whenever the cost estimate changes, the owner or operator must compare the new cost estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new cost estimate, the owner or operator must, within 60 days after the change in the cost estimate, either deposit an amount into the fund so that its value after this deposit at least equals the amount of the cost estimate, or obtain other financial assurance as specified in this Subpart to cover the difference.
 - g) Release of excess funds:
 - 1) If the value of the trust fund is greater than the total amount of the current approved closure cost estimate, the owner or operator may submit a written request to the Agency for a release of the amount in excess of the current approved closure cost estimate.
 - 2) If an owner or operator substitutes other financial assurance as specified in this Subpart for all or part of the trust fund, he or she may submit a written request to the Agency for release of the amount in excess of the current approved closure cost estimate covered by the trust fund.
 - 3) As soon as practicable after receiving a request from the owner or operator

1029 for a release of funds pursuant to this subsection, but within 120 days
1030 following the Agency's receipt of the request, the Agency must instruct the
1031 trustee to release to the owner or operator the amount of funds the Agency
1032 specifies in writing to be in excess of the current approved closure cost
1033 estimate.

1034

1035 h) Reimbursement for removal expenses:

1036

1037 1) After initiating closure, an owner or operator, or any other person
1038 authorized to perform closure, may request reimbursement for partial or
1039 final closure expenditures by submitting itemized bills to the Agency. The
1040 owner or operator may request reimbursements for partial closure only if
1041 sufficient funds remain in the trust fund to cover the costs of closure.

1042

1043 2) As soon as practicable after receiving the itemized bills for partial or final
1044 closure activities, but within 120 days following the Agency's receipt of
1045 the itemized bills, the Agency must determine whether the expenditures
1046 are in accordance with Section 820.305. If the Agency determines, based
1047 on the information available to it, that the remaining cost of closure will be
1048 less than the value of the trust fund, the Agency must instruct the trustee to
1049 make reimbursement in such amounts as the Agency specifies in writing
1050 as expenditures in accordance with Section 820.305.

1051

1052 3) If the Agency determines, based on such information available to it, that
1053 the remaining cost of closure will be greater than the value of the trust
1054 fund, it must withhold reimbursement of amounts it determines are
1055 necessary to preserve the trust corpus in order to accomplish closure until
1056 it determines that the owner or operator is no longer required to maintain
1057 financial assurance. If the fund is inadequate to pay all claims after
1058 closure is completed, the Agency must pay claims according to the
1059 following sequential priorities:

1060

1061 A) Persons the Agency has contracted and authorized to perform
1062 closure activities;

1063

1064 B) Persons who have completed closure activities authorized by the
1065 Agency;

1066

1067 C) Persons who have completed work which furthered closure;

1068

1069 D) The owner or operator and related business entities.

1070

1071 **Section 820.405 Insurance**

1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining insurance which conforms to the requirements of this Section and submitting to the Agency an executed duplicate original of the insurance policy and the certificate of insurance.

- b) The insurer must be *licensed to transact the business of insurance by the Department of Insurance*, according to the Illinois Insurance Code [215 ILCS 5], *or at a minimum the insurer shall be licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states.* [415 ILCS 5/21.1(a.5)]

- c) The policy must be on forms filed with the Illinois Department of Insurance, under 50 Ill. Adm. Code 753 and Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] or on forms approved by the insurance department of one or more states.

- d) Face amount:
 - 1) The insurance policy must be issued for a face amount at least equal to the current closure cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

 - 2) Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate, following written approval by the Agency.

 - 3) Whenever the current closure cost estimate increases to an amount greater than the face amount, the owner or operator, within 90 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternative financial assurance to the Agency.

- e) The insurance policy must guarantee that funds will be available to close the GCDD recovery facility in accordance with Section 820.305. The policy must also guarantee that, once closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties as the Agency specifies. The insurer will be liable when:

- 1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
- 1) The owner or operator abandons the GCDD recovery facility;
 - 2) The owner or operator is adjudicated bankrupt;
 - 3) The Board, under Title VIII of the Act, or a court of competent jurisdiction orders the GCDD recovery facility closed;
 - 4) The owner or operator notifies the Agency that it is initiating closure; or
 - 5) Any person initiates closure with approval of the Agency.
- f) Reimbursement for closure expenses:
- 1) After initiating closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency.
 - 2) Within 60 days after receiving bills for closure activities, the Agency must determine whether the expenditures are for closure in accordance with Section 820.305. The Agency must direct the insurer to make reimbursement in the amounts the Agency specifies in writing as expenditures.
 - 3) If the Agency determines based on information available to it that the cost of closure will be greater than the face amount of the policy, it must withhold reimbursement of such amounts as it considers necessary until it determines that the owner or operator is no longer required to maintain financial assurance. In the event the face amount of the policy is inadequate to pay all claims, the Agency must pay claims according to the following priorities:
 - A) Persons the Agency has contracted to perform closure activities (first priority);
 - B) Persons who have completed closure authorized by the Agency (second priority);
 - C) Persons who have completed work which furthered the closure (third priority);
 - D) The owner or operator and related business entities (last priority).

- 1158 g) Cancellation:
1159
1160 1) The owner or operator must maintain the policy in full force and effect
1161 until the Agency releases the insurer under Section 820.403.
1162
1163 2) The policy must provide that the insurer may not cancel, terminate, or fail
1164 to renew the policy, except for failure to pay the premium. The automatic
1165 renewal of the policy must provide the insured with the option of renewal
1166 at the face amount of the expiring policy. If there is a failure to pay the
1167 premium, the insurer may elect to cancel, terminate, or fail to renew the
1168 policy by sending notice by certified mail to the owner or operator and the
1169 Agency. Cancellation, termination, or failure to renew may not occur,
1170 however, during the 120 days beginning with the date of receipt of the
1171 notice by both the Agency and the owner or operator, as evidenced by the
1172 return receipts. Cancellation, termination, or failure to renew may not
1173 occur and the policy will remain in full force and effect if on or before the
1174 date of expiration the premium due is paid.
1175
1176 h) Each policy must contain a provision allowing assignment of the policy to a
1177 successor owner or operator. The assignment may be conditional upon consent of
1178 the insurer, if consent is not unreasonably withheld.